

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BERTHA GONZALES, individually, and as
parent and next friend of JADE GONZALES,
a minor,

Plaintiff,

vs.

CIVIL NO. 01-898 RLP/LFG

WILLIAM DURAN, STEVE HALL,
RICHARD DILLEY, MARY KENDRICK,
in their individual capacities, the CITY
OF ALBUQUERQUE, and THE SOCIAL
SECURITY ADMINISTRATION,

Defendants.

MEMORANDUM OPINION & ORDER

THIS MATTER having come before the court on Defendant United States of America's¹ Motion to Dismiss (**Docket No. 17**), the court having read the motion, the memoranda in support of and in opposition to the motion and otherwise being fully advised, finds that the motion is not well-taken and will be **DENIED**.

The sole claim against the defendant, Social Security Administration, is set forth in Count VII to the Amended Complaint filed on August 10, 2001 (Docket No. 2). Count VII sets forth an allegation of a violation of the Privacy Act of 1974. There are no other claims made against the Social Security Administration or any other federal agency.

The United States claims that appropriate service was not made on it pursuant to

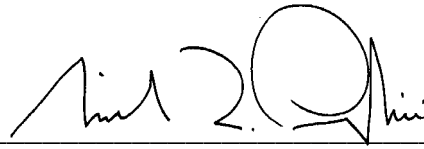
¹The United States of America is not a defendant. This was construed as the defendant, Social Security Administration's motion.

Fed.R.Civ.P. 4. Rule 4 provides that service on a federal agency “is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the . . . agency.” Rule 4(i)(2)(A). A review of the court record shows Plaintiff served the Commissioner of Social Security by certified mail, personally served the agency, served the clerk authorized to accept service at the U.S. Attorney’s Office and mailed a certified copy of the summons and complaint to the Attorney General of the United States. Therefore, Plaintiff has fully complied with the requirement of Rule 4(i)(2) and, therefore, has effectively served the Social Security Administration.

The United States originally argued in its brief in support of motion to dismiss deficiencies in the Plaintiff’s complaint *vis a vis* a Federal Tort Claims Act claim. As pointed out by Plaintiff, the sole claim made against the Social Security Administration is made pursuant to the Privacy Act of 1974. The United States’ reply brief did not address any deficiency in the Privacy Act claim. Therefore, the court will not address the efficacy of the Privacy Act claim that has been made against the Social Security Administration, other than to point out that the claim has been effectively stated in Plaintiff’s Amended Complaint.

IT IS THEREFORE ORDERED that Defendant United States of America’s Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is positioned above a horizontal line.

RICHARD L. PUGLISI
United States Magistrate Judge
Sitting by designation

Manuel Lucero, Esquire - Attorney for Defendant Social Security Administration;

Kathryn Levy, Esquire - Attorney for William Duran, Steve Hall, Richard Dilley, Mary Kendrick and the City of Albuquerque;

Kirtan Khalsa, Esquire - Attorney for Plaintiff